IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.615 OF 1995

Unit Trust of India (U.T.I.) ...Plaintiffs

V/s.

The India Cements Ltd. & Ors. ...Defendants

.....

Mr.A.R.Verma i/b Tejpal & Co. for Plaintiffs.

None for Defendants.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 17, 2007.

P.C.

1. None appears for the Defendants inspite of service. No written statement has been filed. As a result, in terms of order dated 14th July 2000, Suit has been ordered to proceed as undefended Suit.

2. In substance, the case of the Plaintiffs is that they had purchased about 4,500 shares by Defendant No.1 through their broker in Settlement

No.9495 of 2001. These shares were collected by Mr.S.Natarajan/Mr.Rangaswamy from the Bombay Stock Exchange Clearing House along with the 11-12A Forms which gives details of distinctive number ranges of the shares delivered by the broker. Subsequently, on 28th April 1994, the authorised representative of Plaintiff's broker had come for scrutiny of the shares (Good-Bad Checking) and identified 3900 shares of Defendant No.1 as Bad delivery, since the said shares were non pari-passu shares. The remaining 600 shares were accepted by one Mr.Sandip Gore after confirmation of quantity and processed for lodgement. The present Suit relates to the said 600 shares. The Plaintiffs broker has given a letter of confirmation dated 25th November 1994 stating that the aforesaid 600 shares were not with him for any reason. The Plaintiffs took the issue with Defendant No.1, who in turn, advised them under letter dated 4th November 1994 that 50 shares out of said 600 shares have been lodged with them for transfer by Defendant No.2. The Plaintiffs upon detecting the loss of 600 shares of first Defendant Company, the Plaintiffs custodian made efforts to locate the said shares but the same

could not be traced. Accordingly, Plaintiffs custodian addressed letter dated 30th August 1994 to Defendant No.1 to restrain from transferring the said 600 shares to any other person other than the Plaintiffs and to advice about the procedure for issue of duplicate share certificates. The Plaintiffs were informed by letter dated 4th November 1994 by the Defendant No.1 that 50 shares out of the lost shares were lodged with them for transfer by Defendant No.2. The Plaintiffs also received letter dated 17th November 1992 from Defendant No.1 informing about lodgement of 50 shares by Defendant No.2 and calling upon Plaintiffs to obtain a prohibitory order from a competent Court of Law.

3. In this backdrop, present Suit has been filed for the following reliefs:

> "(a) that this Honourable Court be pleased to declare that the Plaintiffs are the absolute owners of and entitled to the 600 suit shares of 1st Defendants Company as more particularly set out and listed in Exhibit ‘A’ annexed to the plaint;
>
> (b) that this Honourable Court be pleased to direct and order the Defendants No.1 to

issue duplicate share certificates to the Plaintiffs, in respect of 600 suit shares of 1st Defendants' Company as more particularly set out and listed in Exhibit 'A' annexed to the plaint;

(c) that the Defendants No.1 their servants agents and representatives be restrained by an order and injunctions of this Hon'ble Court, from in any manner transferring, the said 600 shares of 1st Defendants Company as more particularly set out and listed in Exhibit 'A' annexed to the Plaint or issuing any Dividends, bonuses, rights or any other benefits in respect thereof in favour of any person except the Plaintiffs;

(d) that pending the hearing and final disposal of this suit the defendants No.1 their servants, agents and representatives be restrained by an order and injunction of this Honourable Court from:

(i) in any manner transferring the said 600 suit shares of 1st Defendants Company as more particularly set out and listed in Exhibit 'A' annexed to the Plaint, in favour of any person except the plaintiffs;

(ii) delivering any dividends, bonus, shares, right shares or any other benefits in respect of the said 600 suit shares of 1st Defendants company, as more particularly set out and listed in Exhibit 'A' annexed to the plaint, to any person except the Plaintiffs;

(e) that pending the hearing and final disposal of the above suit this Hon'ble Court be pleased to appoint Court Receiver High Court, Bombay or any other fit and proper person as Receiver of said 600 suit

shares of 1st defendants company as more particularly set out and listed in Exhibit 'A' annexed to the Plaint, with all powers to receive dividends, right shares, bonus shares and all other benefits accruing in respect of aforesaid 600 suit shares, except the power of Sale.

(f) for ad-interim and interim reliefs in terms of prayers (d) and (e) above;

(g) for costs;

(h) for such other orders and reliefs as may be considered fit and proper in the circumstances of the case."

4. As mentioned earlier, Defendants have been duly served but have not bothered to appear nor filed any written statement in the present Suit. Plaintiffs, on the other hand, have filed affidavit of evidence as well as compilation of original documents to support their case stated in the Plaint and reiterated in the affidavit of evidence. The affiant Mrs.Nalini Jitendra Boradia, who has sworn the affidavit of evidence tendered on behalf of the Plaintiffs dated 13th July 2007 has appeared in Court. There is nothing on record to doubt the claim set-up by the Plaintiffs. On the other hand, the case of the Plaintiffs that they had purchased the suit shares (600) from the broker is

established from the documents on record and the statement made on affidavit.

5. In the circumstances, the Plaintiffs are entitled for decree in terms of prayer clauses (a), to (c) referred to above. Accordingly, in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure, I proceed to pass the following order.

6. Suit is decreed in terms of prayer clauses (a) to (c) with costs. Decree be drawn up accordingly.

7. Suit accordingly succeeds. No order as to costs.

8. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.